

**SENATE BILL**

**No. 4**

---

**Introduced by Senator Dutton**

August 10, 2006

---

An act to add Sections 7020, 7021, and 7022 to the Penal Code, relating to prison construction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Dutton. Prison construction: design-build.

Existing law charges the Department of Corrections and Rehabilitation with the responsibility of planning and constructing state correctional facilities.

This bill would authorize the secretary of the department to use the design-build construction procurement process, as defined, to contract for and procure state prison facilities and other related structures, as specified. As part of that process, the bill would require a design-build entity to make various declarations related to its ability to adequately perform the work. A person who files a declaration that he or she knows to be false would be guilty of a misdemeanor. Because the bill would create a new crime, it would impose a state-mandated local program.

This bill would provide that specified provisions of existing law concerning the procurement and selection of services by a state agency head shall not apply if the department expands the scope of an existing contract or enters into a contract with specified firms to perform all required services for an authorized construction project, as specified.

This bill would provide that provisions of the California Environmental Quality Act relating to consideration of alternative sites for a proposed project and alternative uses for the site of a proposed project shall not apply to any department construction project authorized pursuant to legislation enacted in the 2005–06 Second Extraordinary Session, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 7020 is added to the Penal Code, to  
2 read:
- 3 7020. (a) For the purposes of this section, the following  
4 definitions shall apply:
- 5 (1) “Design-build” means a construction procurement process  
6 in which both the design and construction of a project are  
7 procured from a single entity.
- 8 (2) “Design-build project” means a capital outlay project using  
9 the design-build construction procurement process.
- 10 (3) “Design-build entity” means a partnership, corporation, or  
11 other legal entity that is able to provide appropriately licensed  
12 contracting, architectural, and engineering services as needed.
- 13 (4) “Design-build solicitation package” means the  
14 performance criteria, any concept drawings deemed necessary by  
15 the department, the form of contract, and all other documents and  
16 information that serve as the basis on which bids or proposals  
17 will be solicited from the design-build entities.
- 18 (5) “Design-build phase” means the period following the  
19 award of a contract to a design-build entity in which the  
20 design-build entity completes the design and construction

1 activities necessary to fully complete the project in compliance  
2 with the terms of the contract.

3 (6) “Performance criteria” means the information that fully  
4 describes the scope of the proposed project and includes, but is  
5 not limited to, the size, type, and design character of the  
6 buildings and site; the required form, fit, function, operational  
7 requirements, and quality of design, materials, equipment, and  
8 workmanship; and any other information deemed necessary to  
9 sufficiently describe the state’s needs.

10 (7) “Concept drawings” means any drawings or architectural  
11 renderings that are prepared, in addition to performance criteria,  
12 in the detail that the secretary determines necessary to  
13 sufficiently describe the state’s needs.

14 (b) Notwithstanding any provision of the Public Contract Code  
15 or any other provision of law, the secretary may use the  
16 design-build construction procurement process to contract for  
17 and procure state prison facilities and other buildings, structures,  
18 and related facilities pursuant to this section.

19 (c) Prior to contracting with a design-build entity for the  
20 procurement of state prison facilities and other prison buildings  
21 and structures and related facilities, the secretary shall do all of  
22 the following:

23 (1) Prepare a program setting forth the performance criteria for  
24 the design-build project. The performance criteria shall be  
25 prepared by a design professional duly licensed and registered in  
26 the State of California.

27 (2) (A) Establish a competitive prequalification and selection  
28 process for design-build entities, including any subcontractors  
29 listed at the time of bid, that clearly specifies the prequalification  
30 criteria and states the manner in which the winning design-build  
31 entity will be selected.

32 (B) Prequalification shall be limited to consideration of all of  
33 the following criteria:

34 (i) Possession of all required licenses, registration, and  
35 credentials in good standing that are required to design and  
36 construct the project.

37 (ii) Submission of evidence that establishes that the  
38 design-build entity members have completed, or demonstrated  
39 the capability to complete, projects of similar size, scope, or  
40 complexity, and that proposed key personnel have sufficient

1 experience and training to competently manage and complete the  
2 design and construction of the project.

3 (iii) Submission of a proposed project management plan that  
4 establishes that the design-build entity has the experience,  
5 competence, and capacity needed to effectively complete the  
6 project.

7 (iv) Submission of evidence that establishes that the  
8 design-build entity has the capacity to obtain all required  
9 payment and performance bonding, liability insurance, and errors  
10 and omissions insurance, as well as a financial statement that  
11 assures the department that the design-build entity has the  
12 capacity to complete the project.

13 (v) Provision of a declaration certifying that applicant  
14 members of the design-build entity have not had a surety  
15 company finish work on any project within the last five years.

16 (vi) Provision of information and a declaration providing  
17 detail concerning all of the following:

18 (I) Any construction or design claim or litigation totaling more  
19 than five hundred thousand dollars (\$500,000) or 5 percent of the  
20 annual value of work performed, whichever is less, settled  
21 against any member of the design-build entity over the last five  
22 years.

23 (II) Serious violations of the Occupational Safety and Health  
24 Act, as provided in Part 1 (commencing with Section 6300) of  
25 Division 5 of the Labor Code, settled against any member of the  
26 design-build entity.

27 (III) Violations of federal or state law, including, but not  
28 limited to, those laws governing the payment of wages, benefits,  
29 or personal income tax withholding, or of Federal Insurance  
30 Contributions Act (FICA) withholding requirements, state  
31 disability insurance withholding, or unemployment insurance  
32 payment requirements, settled against any member of the  
33 design-build entity over the last five years. For the purposes of  
34 this subclause, only violations by a design-build member as an  
35 employer shall be deemed applicable, unless it is shown that the  
36 design-build entity member, in his or her capacity as an  
37 employer, had knowledge of his or her subcontractor's violations  
38 or failed to comply with the conditions set forth in subdivision  
39 (b) of Section 1775 of the Labor Code.

1 (IV) Information required by Section 10162 of the Public  
2 Contract Code.

3 (V) Violations of the Contractors' State License Law, Chapter  
4 9 (commencing with Section 7000) of Division 3 of the Business  
5 and Professions Code, excluding alleged violations or  
6 complaints.

7 (VI) Any conviction of any member of the design-build entity  
8 of submitting a false or fraudulent claim to a public agency over  
9 the last five years.

10 (vii) Provision of a declaration that the design-build entity will  
11 comply with all other provisions of law applicable to the project,  
12 including, but not limited to, the requirements of Chapter 1  
13 (commencing with Section 1720) of Part 7 of Division 2 of the  
14 Labor Code.

15 (C) The secretary, when requested by the design-build entity,  
16 shall hold in confidence any information required by clauses (i)  
17 to (vi), inclusive.

18 (D) Any declaration required under subparagraph (B) shall  
19 state that reasonable diligence has been used in its preparation  
20 and that it is true and complete to the best of the signer's  
21 knowledge. A person who certifies as true any material matter  
22 that he or she knows to be false is guilty of a misdemeanor and  
23 shall be punished by not more than one year in a county jail, by a  
24 fine of not more than five thousand dollars (\$5,000), or by both  
25 the fine and imprisonment.

26 (3) (A) Determine, as he or she deems in the best interests of  
27 the state, which of the methods listed in subparagraph (B) will be  
28 used as the process for the winning design-build entity. The  
29 secretary shall provide a notification to the State Public Works  
30 Board, regarding the method selected for determining the  
31 winning design-build entity, at least 30 days prior to publicizing  
32 the design-build solicitation package.

33 (B) The secretary shall make his or her determination by  
34 choosing one of the following methods:

35 (i) For projects with an approved budget of ten million dollars  
36 (\$10,000,000) or more, either:

37 (I) A design-build competition based upon performance, price,  
38 and other criteria set forth by the department in the design-build  
39 solicitation package. The department shall establish technical  
40 criteria and methodology, including price, to evaluate proposals

1 and shall describe the criteria and methodology in the  
2 design-build solicitation package. Award shall be made to the  
3 design-build entity whose proposal is judged as providing the  
4 best value in meeting the interest of the department and meeting  
5 the objectives of the project.

6 (II) A design-build competition based upon performance and  
7 other criteria set forth by the department in the design-build  
8 solicitation package. Criteria used in this evaluation of proposals  
9 may include, but need not be limited to, items such as proposed  
10 design approach, life-cycle costs, project features, and functions.  
11 However, any criteria and methods used to evaluate proposals  
12 shall be limited to those contained in the design-build solicitation  
13 package. Award shall be made to the design-build entity whose  
14 proposal is judged as providing the best value, for the lowest  
15 price, meeting the interests of the department and meeting the  
16 objectives of the project.

17 (ii) For projects with an approved budget of two hundred fifty  
18 thousand dollars (\$250,000) or more, a design-build competition  
19 based upon program requirements and a detailed scope of work,  
20 including any performance criteria and concept drawings set  
21 forth by the department in the design-build solicitation package.  
22 Award shall be made on the basis of the lowest responsible bid.

23 (4) For the purposes of this subdivision, the following  
24 definitions apply:

25 (A) “Best interest of the state” means a design-build process  
26 that is projected by the secretary to reduce the project delivery  
27 schedule and total cost of a project while maintaining a high level  
28 of quality workmanship and materials, when compared to the  
29 traditional design-bid-build process.

30 (B) “Best value” means a value determined by objective  
31 criteria that may include, but is not limited to, price, features,  
32 functions, life cycle costs, experience, and other criteria deemed  
33 appropriate by the department.

34 (d) The Legislature recognizes that the design-build entity is  
35 charged with performing both design and construction. Because  
36 a design-build contract may be awarded prior to the completion  
37 of the design, it is often impracticable for the design-build entity  
38 to list all subcontractors at the time of the award. As a result, the  
39 subcontractor listing requirements contained in Chapter 4  
40 (commencing with Section 4100) of Part 1 of Division 2 of the

1 Public Contract Code may create a conflict with the  
2 implementation of the design-build process by requiring all  
3 subcontractors to be listed at a time when a sufficient set of plans  
4 may not be available. It is the intent of the Legislature to  
5 establish a clear process for the selection and award of  
6 subcontracts entered into pursuant to this section in a manner that  
7 retains protection for subcontractors while enabling design-build  
8 projects to be administered in an efficient fashion. Therefore, all  
9 of the following requirements shall apply to subcontractors,  
10 licensed pursuant to Chapter 9 (commencing with Section 7000)  
11 of Division 3 of the Business and Professions Code, that are  
12 employed on design-build projects undertaken pursuant to this  
13 section:

14 (1) The department, in each design-build solicitation package,  
15 may identify types of subcontractors, by subcontractor license  
16 classification, that will be listed by the design-build entity at the  
17 time of the bid. In selecting the subcontractors that will be listed  
18 by the design-build entity, the department shall limit the  
19 identification to only those license classifications deemed  
20 essential for proper completion of the project. In no event,  
21 however, may the department specify more than five licensed  
22 subcontractor classifications. In addition, at its discretion, the  
23 design-build entity may list an additional two subcontractors,  
24 identified by subcontractor license classification, that will  
25 perform design or construction work, or both, on the project. In  
26 no event shall the design-build entity list at the time of bid a total  
27 amount of subcontractors that will perform design or  
28 construction work, or both, in a total of more than seven  
29 subcontractor license classifications on a project. All  
30 subcontractors that are listed at the time of bid shall be afforded  
31 all of the protection contained in Chapter 4 (commencing with  
32 Section 4100) of Part 1 of Division 2 of the Public Contract  
33 Code. All subcontracts that were not listed by the design-build  
34 entity at the time of bid shall be awarded in accordance with  
35 paragraph (2).

36 (2) All subcontracts that were not to be performed by the  
37 design-build entity in accordance with paragraph (1) shall be  
38 competitively bid and awarded by the design-build entity, in  
39 accordance with the design-build process set forth by the

1 department in the design-build solicitation package. The  
2 design-build entity shall do all of the following:

3 (A) Provide public notice of the availability of work to be  
4 subcontracted in accordance with Section 10140 of the Public  
5 Contract Code.

6 (B) Provide a fixed date and time on which the subcontracted  
7 work will be awarded in accordance with Section 10141 of the  
8 Public Contract Code.

9 (C) As authorized by the department, establish reasonable  
10 prequalification criteria and standards, limited in scope to those  
11 detailed in paragraph (2) of subdivision (c).

12 (D) Provide that the subcontracted work shall be awarded to  
13 the lowest responsible bidder.

14 (e) This section shall not be construed and is not intended to  
15 extend or limit the authority specified in Section 19130.

16 (f) Any design-build entity that is selected to design and  
17 construct a project pursuant to this section shall possess or obtain  
18 sufficient bonding consistent with applicable provisions of the  
19 Public Contract Code. Nothing in this section shall prohibit a  
20 general or engineering contractor from being designated the lead  
21 entity on a design-build entity for the purposes of purchasing  
22 necessary bonding to cover the activities of the design-build  
23 entity.

24 (g) Any payment or performance bond written for the  
25 purposes of this section shall use a bond form developed by the  
26 department. In developing the bond form, the department shall  
27 consult with the surety industry to achieve a bond form that is  
28 consistent with surety industry standards, while protecting the  
29 interests of the state.

30 (h) The provisions of Section 13332.19 of the Government  
31 Code relating to design-build projects under the jurisdiction of  
32 the Department of General Services shall also apply to design  
33 build projects authorized under this section.

34 SEC. 2. Section 7021 is added to the Penal Code, to read:

35 7021. Sections 4527 and 4528 of the Government Code shall  
36 not apply if the Department of Corrections and Rehabilitation  
37 expands the scope of an existing contract with a firm providing  
38 architectural or engineering services, or both, or construction  
39 project management services, or if it enters into a contract with a  
40 firm that has previously provided any of these services to the



1 department, to perform all required architectural, engineering, or  
2 construction project management services for any construction  
3 project authorized pursuant to legislation enacted in the 2005–06  
4 Second Extraordinary Session.

5 SEC. 3. Section 7022 is added to the Penal Code, to read:

6 7022. (a) The provisions of Division 13 (commencing with  
7 Section 21000) of the Public Resources Code that require  
8 consideration of alternative sites for a proposed project and  
9 alternative uses for the site of a proposed project shall not apply  
10 to any Department of Corrections and Rehabilitation construction  
11 project authorized pursuant to legislation enacted in the 2005–06  
12 Second Extraordinary Session.

13 (b) The cumulative impact analysis of any environmental  
14 impact report prepared for a Department of Corrections and  
15 Rehabilitation construction project authorized pursuant to  
16 legislation enacted in the 2005–06 Second Extraordinary Session  
17 shall be based on the combined effects of those related projects  
18 expected to be under construction or completed by the time the  
19 proposed project is ready for occupancy.

20 SEC. 4. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the  
25 penalty for a crime or infraction, within the meaning of Section  
26 17556 of the Government Code, or changes the definition of a  
27 crime within the meaning of Section 6 of Article XIII B of the  
28 California Constitution.

29 SEC. 5. This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety  
31 within the meaning of Article IV of the Constitution and shall go  
32 into immediate effect. The facts constituting the necessity are:

33 As of June 2006, the prison inmate population totaled nearly  
34 172,000. More than 16,000 inmates are being housed in buildings  
35 that were not designed as housing units, and all capacity in these  
36 nontraditional spaces will be exhausted by June 2007. In order to  
37 provide prison capacity beyond 2007, and construct housing units

- 1 and related program space to replace nontraditional housing, it is
- 2 necessary that this act take effect immediately.

O